IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO. 1705 OF 2003

The Oriental Insurance Co. Ltd. ... Appellant

V/s

1. Mamtabai Dadarao Kshirsagar & ors. ... Respondents

Shri N. M. Godbole for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 29TH NOV., 2004.

P.C.:

1. Heard learned counsel for the appellant.

2. The appellant has come in appeal against the judgment and order dated 9.11.1995 passed by the Member, Motor Accident Claim Tribunal (hereinafter referred to as the M.A.C.T.), Raigad- Alibag whereunder claim petition was partly allowed and opponent Nos.1, 2 & 3 were directed to pay jointly and severally Rs.80,600/- including the amount of no fault liability with interest at the rate of 12% p.a. from 10.1.1989 till realization of the amount and proportionate costs of this claim petition to the applicants.

3. This appeal can be disposed of only on the basis of well settled legal position to the effect that unless the appeal of the appellant Insurance Company is covered under Sec. 149(2) of the M.V. Act, it cannot be maintained in law.

On the basis of available evidence, the learned Trial Judge came to the conclusion that it was established that the accident did not take place on 23.5.1986 as a result of which one Bhagwan Dadarao Kshirsagar died in the said accident. It is also established that the vehicle No. MHL-352 was involved in the said accident which took place at the said spot for which the driver was responsible and, therefore, the claimant's case was upheld and compensation order was passed which is the subject matter of the present appeal filed by the Insurance Company - the original opponent No.3.

The factual matrix involved in this appeal did show that the claimant's son was working as a labourer on the truck of Opponent No.1 and opponent No.2 was the driver. Opponent No.2 in his written statement stated that deceased Bhagwan was travelling in the truck as an employee of opponent No.1. The learned counsel for the

appellant submits that this was the statement deliberately made in the course of written statement in collusion with the owner of the truck so as to avoid the liability to pay the compensation and saddle the responsibility on Insurance Company. However, as observed by the learned Trial Judge, the Insurance Company did not lead any evidence to prove the alleged collusion between opponent Nos. 1 & 2. The learned Trial Judge has rightly observed that if the opponent No.3 wanted to establish collusion between opponents 1 & 2, one of those should have been examined as a witness and could be cross-examined to illustrate the factual position which was not done. Therefore, it was held that the deceased was an employee of opponent No.1 and consequently the order of compensation came to be passed.

4. The learned counsel for the appellant today vehemently urged that since there was collusion between original opponents 1 & 2, the Insurance Company is not liable to pay the compensation amount and, therefore, the impugned order passed by the Tribunal suffers from material illegality. In order to buttress his argument, he sought to rely upon few judgments of this Court as well as of Gujrath High Court. However, perusal of the

said rulings show that the ratio thereof is not applicable to the present case, especially when the alleged collusion between the parties was not established.

The learned counsel for the appellant made submission that, by virtue of Sec. 167 of the M.V. Act, the claimant should have approached the Workmen's Compensation Tribunal in respect of filing the claim under the provisions of M.V. Act. However, it is needless to mention that he is not barred from approaching the M.A.C.T. under the M. V. Act and thereunder he opted to come to the M.A.C.T. instead of going to the Workmen's Compensation Tribunal. Hence on this ground the appeal cannot survive.

In this regard I must note that the law laid down by the Supreme Court in the case of **Chinnama George and ors. v/s. N.K. Raju & anr., reported in (2000) 4 SCC 130,** wherein the Insurance Company's right of appeal is denied. It is held that unless any of the conditions contained in Sec.149(2) exists and said defence is taken in the pleading and prayed before the M.A.C.T., the Insurance Company is legally bound to satisfy the award made by the Tribunal and is barred from filing the

appeal against such award. In view of this ratio laid down by the Supreme Court in the aforesaid ruling, I am satisfied that the appeal is not maintainable and, therefore, deserves to be dismissed and stands dismissed in limine with no order as to costs.

Consequently, the civil application also stands dismissed with no order as to costs.

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